

STATE OF NEW JERSEY

Board of Public Utilities
Two Gateway Center
Newark, NJ 07102
www.bpu.state.nj.us

TELECOMMUNICATIONS

IN THE MATTER OF THE PETITION OF)	<u>ORDER OF APPROVAL</u>
ESSEX ACQUISITION CORP. FOR AN)	
EXPEDITED ORDER AUTHORIZING THE)	
PROVISION OF LOCAL EXCHANGE AND)	
INTEREXCHANGE TELECOMMUNICATIONS)	
SERVICES THROUGHOUT NEW JERSEY)	DOCKET NO. TE02100775

(SERVICE LIST ATTACHED)

BY THE BOARD:

Pursuant to N.J.S.A. 48:2-1 et seq. and Section 253 of the federal Telecommunications Act of 1996, 47 U.S.C. §151 et seq., and, by letter dated October 17, 2002, Essex Acquisition Corp. ("Petitioner" or "EAC") filed a Petition with the New Jersey Board of Public Utilities ("Board") requesting authority to provide all forms of both switched and dedicated, resale and facilities based, local exchange and interexchange telecommunications services throughout New Jersey. Petitioner requests confidential treatment of the financial information in Exhibit 4 of its Petition.¹

BiznessOnline.com, Inc. is a parent company of EAC and Telecon Communications Inc. and is in the business of providing Internet Services. EAC is a corporation organized under the laws of the State of Delaware. Petitioner states that it maintains its principal place of business at 1720 Route 34, P. O. Box 1347, Wall, New Jersey 07719.

Petitioner has submitted copies of its Articles of Incorporation and its New Jersey Certificate of Authority to Operate as a Foreign Corporation. According to the Petition, EAC was formed to provide local exchange and interexchange telecommunications services throughout New Jersey. Petitioner states that currently it is not authorized to provide resold or facilities-based local exchange services in any other state. However, Telecon Communications, Inc. is authorized to provide Competitive Local Exchange Carrier (CLEC) telecommunications service in New York, Massachusetts and Connecticut.

¹ Pursuant to the Open Public Records Act, N.J.S.A. 47:1A-1, et seq., and by letter from the Secretary, Petitioner has been notified that the Board shall handle such requests for confidential treatment in accordance with the Board's proposed regulations at N.J.A.C. 14:1-12. et seq.

In accordance with a letter dated November 22, 2002, on the sale of assets by Essex Communications, Inc. ("ECI") to Essex Acquisition Corp. ("EAC") and, pursuant to N. J. A. C. 14:1-5.6(d), both the parties have requested Board's confirmation on the proposed sale of assets without petition and approval of the Board. Pursuant to the letter, Petitioner states that ECI is ceasing its all operations and transferring its customer base to EAC. Petitioner has stated in its petition that ECI has assigned its interconnection agreement with Verizon to EAC with Verizon's consent.

In its Petition, Petitioner seeks statewide authority to provide the full range of facilities-based and resold intra-exchange and inter-exchange services in New Jersey. Petitioner plans to offer local exchange services primarily to business customers in New Jersey through a combination of its own facilities and network elements leased from Verizon-New Jersey. Petitioner further states that resold local exchange service will also be available to both business and residential customers. Exchange services may include, but will not necessarily be limited to, local exchange access services to single-line, multi-line and Centrex customers and dedicated and special carrier access services. Upon acquisition of the customer base of eLEC Communications Corp., Petitioner plans to expand into the New Jersey market over the course of the next five years and, is looking forward to serving 250 customers during its first year of operations and approximately 5,000 customers over the next five years.

Petitioner requests a waiver of N. J. A. C. 14:1-4.3 which requires that its books and records be maintained in accordance with the Uniform System of Accounts (USOA). Petitioner requests, in the interest of efficiency and to prevent undue burden, permission to maintain its books and records in accordance with Generally Accepted Accounting Principles (GAAP).

Petitioner asserts that approval of its Petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. Petitioner also asserts that approval of this Petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings.

With regard to its technical and managerial qualifications, EAC states that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. Petitioner has submitted the professional biographies of its key personnel who, according to EAC, are well qualified to execute its business plans and have managerial and technical experience in the telecommunications industry.

Petitioner has submitted a copy of the most recent financial report of its immediate parent, BiznessOnline.com, Inc. and pro forma income and expense projection statement of EAC. Petitioner states that its projections constitutes confidential and proprietary information and, therefore, are submitted under seal. EAC also respectfully requests that access to such information should be limited to authorized Board Personnel.

DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L. 104-104, 110 Stat.56, codified in scattered sections of 47 U.S.C. §151 et. seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this Petition, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's declaration that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.16(b)(1) and (3).

Therefore, having reviewed EAC's Petition and the information supplied in support thereof, the Board FINDS that the Petitioner has demonstrated it possesses the requisite financial, technical and managerial resources which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES the Petitioner to provide facilities based local exchange and interexchange telecommunications services throughout New Jersey subject to approval of its tariff and submission of financial statements. The Board also FINDS that in accordance with N. J. S. A. 48:2-59 and 48:2-60, the Petitioner is subject to an annual assessment by the Board. The Board notes that the Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements i. e. balance sheet, income statements, statement of change in cash flow and statement of change in equity, have been provided.

The Board HEREBY DIRECTS that:

- 1) Petitioner file its tariff for Board approval.
- 2) Pursuant to N. J. S. A. 48:2-16.3, Petitioner shall file an annual report as of December 31 of each year, which is due on or before March 31 of the following year.
- 3) Pursuant to N. J. S. A. 48:2-59 and 48:2-60, Petitioner shall file a statement of gross intrastate revenues from operations form (AR3-1) as of December 31 of each year, which is due on or before June 1 of the following year.

On or before February 1st of each year, the Petitioner will receive from the Division of Telecommunications, an annual report package and a statement of gross intrastate revenues from operations form for the preceding calendar year. The purpose of these documents is to report company's financial information and gross intrastate revenues from operations as of December 31 of each year. The annual report and a statement of gross intrastate revenues from operations form is due on or before March 31 and June 1 of the following year, respectively. If Petitioner does not receive these documents, it is Petitioner's duty and responsibility to make an inquiry at the Board and obtain these documents. It is Petitioner's duty and responsibility to ensure timely filing of these reports.

Regarding the Petitioner's request for waivers of the Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements that the Petitioner maintain its books and records under the USOA. Therefore, the Board APPROVES the Petitioner's request for the exemptions from maintaining its books and records under the USOA.

DATED: 12/19/02

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

JEANNE M. FOX
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

(SIGNED)

CONNIE O. HUGHES
COMMISSIONER

ATTEST:

(SIGNED)
KRISTI IZZO
SECRETARY

(SIGNED)

JACK ALTER
COMMISSIONER